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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 27, 2008

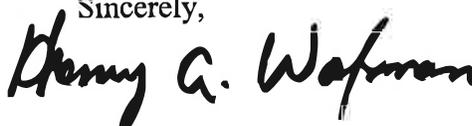
The Honorable John Spratt  
Chairman  
Committee on the Budget  
207 Cannon House Office Building  
Washington, DC 20515

Dear Chairman Spratt:

I am pleased to submit, pursuant to the Congressional Budget Act of 1974 and Rule X, clause 4(f) of the Rules of the House, the enclosed views and estimates of the Committee on Oversight and Government Reform for the fiscal year 2009 budget.

Please feel free to contact me if you have any questions.

Sincerely,



Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member

Enclosure

## **Views and Estimates on the Fiscal Year 2009 Budget**

### **Committee on Oversight and Government Reform**

#### **United States House of Representatives**

**February 26, 2008**

Each standing Committee of the House is required by the Congressional Budget Act of 1974 and Rule X, clause 4(f) of the Rules of the House to submit to the Committee on the Budget its views and estimates on the budget with respect to matters within its jurisdiction or functions. The following list is not exhaustive, but highlights the views of the Committee on some of the issues addressed in the President's fiscal year 2009 budget that are within the scope of the Committee's jurisdiction. The FY 2008 budget resolution also requires committees to include in their annual views and estimates recommendations for improving the performance of programs within their jurisdictions. The following list includes some of the Committee's recommendations for improving program performance based on the Committee's oversight efforts.

#### **OPEN Government Act of 2007**

The Committee strongly disagrees with the President's proposal in the budget to directly overturn a section of legislation signed into law by the President on December 31, 2007. The OPEN Government Act of 2007 made numerous important reforms to the Freedom of Information Act that would expand public access to information. Section 10 of the bill, now 5 U.S.C. § 552(h), creates an independent Office of Government Information Services within the National Archives and Records Administration. This office is intended to serve as a non-exclusive alternative to litigation for requesters, and to mediate conflicts between requesters and agencies. The legislation was passed by strong bipartisan majorities in both the House and the Senate before it was signed into law.

The President's budget would subvert this section of the law in two ways. First, it would shift the Office of Government Information Services from the National Archives into the Department of Justice. The Department of Justice already serves a role in FOIA litigation, representing agencies in lawsuits brought by requesters. This Department cannot reasonably serve as both the representative of one side in a conflict and the independent mediator. Second, the President's budget calls for repeal of this subsection of the code entirely, thereby eliminating the mediation function from the FOIA process.

The Committee believes that instead of implementing the President's proposed changes, Congress should provide additional funds to the National Archives for the purpose of establishing and running the Office of Government Information Services as the agency is required to do by the OPEN Government Act of 2007.

## **Government Contracts**

The Committee is concerned that the President's "budget reforms" do not include any proposals targeting waste, fraud, and abuse in government contracts. Over half of the increase in discretionary spending since 2000 is due to increased spending on private contractors. Spending on federal contracts now consumes over 40% of every dollar of discretionary spending. At the same time, the growth in contracting has resulted in rising waste, fraud, and abuse in federal contracting. The Committee believes that the responsible management of federal discretionary spending requires the Administration to devote its attention and resources to improving the management and oversight of federal contracts.

The Committee views competition as an effective way to ensure the efficient use of taxpayer dollars. However, the Committee is concerned that the President's budget does not call for an increase in competition in federal contracts. Despite the advantages to the taxpayer of full and open competition, contracts awarded without full and open competition have grown rapidly under the Bush Administration. In 2000, the federal government spent \$67.5 billion on contracts awarded without full and open competition. By 2006, federal spending on these no-bid and limited-competition contracts had grown to \$206.9 billion, an increase of 206%. In total, the dollar value of contracts awarded without full and open competition more than tripled between 2000 and 2006. The Committee encourages federal agencies to conserve taxpayer dollars by increasing the use of full and open competition and is currently considering various legislative proposals to achieve that goal.

## **Federal Property Reform**

The budget request includes suggested legislative language to create a pilot program for the disposal of federal real property.<sup>1</sup> There are genuine, costly, and pressing problems in the way the federal government manages its public buildings and lands. Unneeded and under-used buildings are in the federal inventory. Some buildings are literally falling apart. Accurate data on federal real property is hard to obtain from agencies, and expensive leasing of office space is too often the quick answer. While the Committee supports an increase in property disposals, we do not support the pilot program as outlined in the President's budget.

One problem with the provision in the President's budget on federal property reform is that it would waive critical provisions of law designed to ensure sound management of federal property. The President is proposing to waive provisions that allow state and local government and providers of assistance to the homeless to purchase federal property in certain circumstances at a discount. Any final legislation creating a pilot program for the disposal of federal real property must include these important protections.

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<sup>1</sup> *Fiscal Year 2009 Budget of the U.S. Government*, Appendix, 15 (Feb. 2008).

The pilot program suggested in the President's budget also would waive provisions of law that give state and local governments an opportunity to use surplus federal properties at a discounted price. Under current law, state and local governments can receive surplus federal property at discounts of up to 100% for certain public benefit purposes. This policy is of special importance to local communities, which is why the U.S. Conference of Mayors strongly opposes the proposed waiver. The Conference and many national homeless groups also oppose waiving the requirement that homeless provider uses be considered prior to the disposal of property.

The President's proposed pilot program is also flawed in that it eliminates the requirement under current law that agencies with excess property make it available first to other federal agencies that may have a need for it. This requirement is sound management practice and should be retained.

Current law requires proceeds from the sale of surplus federal property to be returned to the U.S. Treasury. The Administration's proposed pilot project would waive this law under the premise that agencies may be more motivated to dispose of property if they can keep the proceeds. It would allow the disposing agencies to retain 20% of the proceeds of the sales with 80% returning to the Treasury.

There are two major problems with this approach. First, most large landholding agencies, including the Department of Defense, the Department of Veterans Affairs, the General Services Administration (GSA), and the Coast Guard, already have the authority to retain 100% of their proceeds. It is unclear why any of those agencies would use the pilot and retain only 20% of the proceeds. Second, according to the Congressional Budget Office, it would result in \$20 million a year in lost receipts based on projected sales from other agencies.

Unlike the pilot program, the Committee believes that another proposal in the President's budget regarding GSA's enhanced disposal authorities does have the possibility of increasing property disposals.<sup>2</sup> The Committee may consider legislation similar to this proposal that would allow GSA to pay initial disposal costs for other agencies, to help facilitate future disposals.

## **Outsourcing**

The Administration's budget continues to push for expansion of the President's Competitive Sourcing initiative, under which federal employees must compete with private sector companies to continue performing commercial activities. The Committee agrees that competition is an effective way to ensure the efficient use of tax dollars. Competition, however, must also be fair. Some of the "legislative restrictions" noted by the Administration are, in fact, requirements by Congress to improve fairness in the competitive process. Measures such as requiring formal competitions when more than ten employees are affected and prohibiting private sector firms from benefiting because they do not offer health benefits should be expanded not repealed, as the Administration's budget proposes.

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<sup>2</sup> *Fiscal Year 2009 Budget of the U.S. Government*, Appendix, 1078 (Feb. 2008).

The President's budget states, "Agencies have projected that competitions completed during the last four years should generate a total of about \$7 billion in savings, or an estimated annualized savings of about \$1 billion." The Administration's budget proposal argues that public-private competitions result in cost control and performance efficiencies. However, such claims need to be scrutinized to determine whether or not they are accurate. The President's budget acknowledges that federal agencies have been able to document less than \$1 billion to date in "actual savings and cost avoidances." The size and scope of the contract workforce is unknown, and there is no system to track how much it is costing the government to execute these public-private competitions. Even more disconcerting is that federal agencies may be increasingly contracting out inherently governmental functions because they are under pressure from OMB to meet certain competition targets under the President's management agenda. Federal agencies should only engage in public-private competitions when it is evident they are in the best interest of the public and will save taxpayer dollars.

### **Program Assessment Rating Tool (PART)**

The President's budget for Fiscal Year 2009 again includes information on the Program Assessment Rating Tool (PART). This assessment, conducted by the Office of Management and Budget (OMB) in consultation with the agencies responsible for a specific program's operations, raises a number of issues which cause the Committee concern. Although the President's budget claims that PART uses a "consistent methodology," we do not believe the methodology used accurately measures the effectiveness of programs.

We are concerned that the PART is not a meaningful analysis of program effectiveness, but rather serves as a tool for OMB to criticize congressional actions in authorizing programs that the White House does not support. The results of independent analysts have raised questions about the PART process. For example, auditors from the Government Accountability Office (GAO) and the HUD Inspector General, as well as research institutions such as the Urban Institute and Brookings Institute, have found the HOPE VI federal housing program to be effective, yet OMB rates this program as ineffective under PART.

Under the PART process, OMB does not apply metrics consistently across agencies. A recent study by the National Academy of Sciences (NAS) found that OMB would not allow EPA to use certain metrics that it allows other agencies to use. OMB also focuses on outcome-based measures which are not always an accurate measure of success. The NAS report raised concerns with OMB's use of outcome-based measures for EPA scientific research programs. The NAS committee found that, "for most research programs, ultimate–outcome-based efficiency measures are *neither achievable nor valid*."<sup>3</sup> The committee also found that "EPA's difficulties in complying with the PART questions about efficiency . . . have grown out of inappropriate OMB requirements for outcome-based efficiency metrics."<sup>4</sup>

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<sup>3</sup> National Academies, *Evaluating Research Efficiency in the U.S. Environmental Protection Agency*, 4 (2008).

<sup>4</sup> *Id.* at 3.

In summary, Congress should be skeptical that OMB's assessments are neutral measures of the effectiveness of federal programs that should guide funding decisions.

### **Sunset and Results Commissions**

The President's budget renews its recommendation that Congress establish sunset and results commissions. The Committee does not support these proposals, which would jeopardize federal agencies and programs and inappropriately transfer power from Congress to the executive branch.

Congress already has the authority to restructure and consolidate agencies and programs when necessary. Congress should not delegate this authority to executive branch commissions. If the Administration has a specific proposal to eliminate or reorganize an agency or program, it should submit the proposal to Congress for consideration under regular order.

### **Bureau of the Census**

The Census Bureau serves as the leading source of statistical data about the nation's population and economy. Statistics derived from the decennial United States Census, the quinquennial Economic Census and Census of Governments, and more than 100 annual surveys guide important decisions bearing on the distribution of governmental resources as well as political apportionment. This year's budget request for the Census Bureau is \$2.6 billion, more than double last year's request. This increase is driven by the funding needed for the decennial census.

Ensuring that the Census Bureau has adequate resources to prepare for and conduct the 2010 Census is an important priority for the Committee. The President's budget request proposes \$2.1 billion, an increase of \$1.3 billion over the fiscal year 2008 request, to continue preparations for a re-engineered, short-form only 2010 Census. This includes the 2008 dress rehearsal, continued development of handheld computers, the opening of local census offices, and the printing of millions of census questionnaires and other forms. Census automation is expected to facilitate a more accurate count and is estimated to save \$1.2 billion. Ensuring that funding for this effort is expended and accounted for properly is an important oversight objective.

The Committee will seek to ensure that programs designed to measure the accuracy of the 2010 Census are adequately tested in the 2008 Dress Rehearsal and fully funded for the Decennial Census itself.

Whether the budget request adequately supports other measures to ensure an accurate and thorough count will be a focus of oversight activity by the Subcommittee on Information Policy, Census, and National Archives. Funding is critical to enable effective recruitment, hiring, and training of census workers to perform the decennial survey. Moreover, availability of resources also will influence which enumeration methods, apart from automation, can and will be used to address factors that have contributed historically to the over-counting and undercounting of

certain population subgroups. During the 2000 Census, for example, enumerators encountered serious difficulties in achieving accurate enumeration with respect to small multi-unit and hidden residences in both densely populated urban areas and sparsely populated rural areas. Experts have thus highlighted the need for alternative enumeration methods in areas where these irregular housing situations are prevalent. The Committee is concerned that the Census Bureau apparently does not intend to employ update/enumerate methodology in the 2008 dress rehearsal. The Subcommittee on Information Policy, Census, and National Archives will examine whether this decision is a function of inadequate resources and what bearing it will have on the 2010 Census.

The Subcommittee on Information Policy, Census, and National Archives will conduct oversight activities to determine if funding for the 2010 Census is adequate to complete the dress rehearsal, and to fund the necessary technology, recruitment, hiring, and training of decennial workers. The Subcommittee will seek to ascertain whether the FY 2009 budget request provides adequate support for promoting awareness of, and participation in, the 2010 Census through partnerships with state, local, and tribal governments, school districts through the Census in Schools program, and commercial, nonprofit, and religious entities. The utilization of these partnerships will be critical to ensuring the highest possible rate of response and to minimizing census errors.

The annual collection of statistical data on income and poverty is also an important area of oversight interest. The Committee will work to ensure that the Bureau has adequate funding to re-establish the Survey of Income and Program Participation (SIPP) at the 45,000 household sample size. The Administration's FY 2009 request provides \$46.4 million for improvements to the current SIPP system by FY 2012, including updating computer programming, improving survey content, investigating, testing, and, as appropriate, implementing an event history calendar, and enhancing the security of laptops used in the field.

### **Information Security**

The President's budget contains approximately \$7.3 billion for cyber security activities. The Committee is concerned about the significant number of security related incidents reported at federal agencies, including data breaches involving personally identifiable information and other sensitive data. Other security concerns include reported security lapses and corruption of networks at agencies having significant amounts of classified data, such as the Department of Homeland Security and the Department of Energy. Before the Subcommittee on Information Policy, Census, and National Archives, GAO testified that agencies have not fully implemented agencywide information security programs and that "[a]s a result, federal systems and information are at increased risk of unauthorized access to and disclosure, modification, or destruction of sensitive information, as well as inadvertent or deliberate disruption of system operations and services."<sup>5</sup>

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<sup>5</sup> Testimony of Gregory C. Wilshusen, U.S. Government Accountability Office, *Information Security: Although Progress Reported, Federal Agencies Need to Resolve Significant Deficiencies* (Feb. 2008) (GAO-08-496T).

In response to these concerns, the Committee will review the 2002 Federal Information Security Management Act (FISMA) and agency efforts to improve the security, integrity, and reliability of the federal government's information systems. Furthermore, the Committee will consider new approaches to agency privacy practices, including potential revisions to the Privacy Act, in order to ensure the privacy of individual information contained in government files.

### **National Archives**

The National Archives and Records Administration (NARA) is the principal repository of records documenting the nation's history and the ongoing function of its government. NARA plays a key role in fostering effective and responsible government through management of the records in all three branches of the federal government and through sustained access to historically valuable records in the National Archives and the presidential libraries. Public access to these records is essential to ensuring government transparency and accountability.

The President's budget requests \$1.6 million for additional archival staff to address the enormous FOIA processing needs for both textual and electronic presidential records. While the Office of Presidential Libraries is examining ways to make the processing of presidential records more efficient, without adequate staff and resources devoted to processing presidential records and declassification, FOIA backlogs will continue to grow, in-demand and complex electronic records will not get needed attention, and presidential records will not be reviewed for declassification in compliance with Executive Order 12958.

The President's request will be used to hire and train 15 additional employees for presidential records processing. This funding will enhance NARA's ability to process presidential records to meet statutory obligations and strategic goals. NARA will dedicate eight positions to decreasing the textual FOIA backlog at the Reagan, Bush, and Clinton Libraries. The remaining seven workers will be dedicated to processing presidential electronic records. In past years, inadequate staffing has contributed to FOIA non-compliance. The Subcommittee on Information Policy, Census, and National Archives will monitor the situation to determine if increased staffing levels help NARA and other agencies comply with FOIA and eliminate the growing backlog of information requests.

The Electronic Records Archives (ERA) is NARA's system to capture electronic records and information, regardless of format, save them permanently, and make them accessible on whatever hardware or software is currently in use. Various problems have been identified in the development of the ERA. These problems have led to a delay in delivery of this system for use in NARA operations from September 2007 to June 2008.

For FY 2009, the President's budget requests an increase of approximately \$9 million for ERA, which includes funding to provide public access and enable long-term preservation and sustained access to electronic records. The increase would bring ERA total funding to \$67 million. The Subcommittee on Information Policy, Census, and National Archives will continue to exercise oversight to ensure that ERA fulfills its mission to accept, preserve, and provide access to authentic electronic records.

The National Historical Publications and Records Commission (NHPRC), the grant-making arm of NARA, is targeted in the President's FY 2009 budget for zero funding for grants and zero funding for staff to administer the agency and its programs. The NHPRC grants program is authorized at \$10 million through FY 2009. This small but effective program last received its full funding level in FY 2004. In FY 2008, Congress appropriated \$7.5 million for NHPRC grants and \$2 million for administrative costs despite the Administration's continued efforts to eliminate the program. The uncertainty created by the annual threat of extinction endangers NHPRC's programmatic integrity. For FY 2009, the Committee supports full funding for national grants at \$10 million.

Specifically, the Committee supports increased grant funding for the Founding Fathers' Papers (Franklin, Jefferson, Washington, Adams, and Madison). The Committee also supports grant funding for the preservation of historic records of servitude, emancipation, and post-Civil War reconstruction.

NHPRC currently is helping to fund dozens of papers projects, including projects documenting the ratification of the Constitution and the First Federal Congress, the correspondence between Elizabeth Cady Stanton and Susan B. Anthony, and the Papers of Eleanor Roosevelt, Frederick Douglass, and General George C. Marshall.

### **Federal Energy Management**

The Committee is pleased that in his final State of the Union address, President Bush stressed the importance of "confronting global climate change" and reducing our dependence on oil in order to ensure "our security, our prosperity" and meet environmental goals. The federal government is the largest energy consumer in the United States and is one of the single largest producers of greenhouse gas emissions in the world. In light of record high energy prices, concerns about energy security, and growing awareness of global warming, it is important for the federal government to lead by example and reduce its energy consumption, reliance on fossil fuel based energy, and limit greenhouse gas emissions. However, the Committee is concerned that the Administration's budget does not reflect these goals.

Congress and the Administration have called on the federal government to reduce its energy consumption and reliance on fossil fuel based energy. The Energy Independence and Security Act of 2007 (EISA) contains multiple provisions that were passed by, or within the jurisdiction of, the House Oversight and Government Reform Committee. EISA requires federal agencies to reduce energy consumption in their buildings by 3% annually, resulting in a 30% overall reduction by FY 2015. EISA also requires federal agencies to eliminate fossil fuel generated energy consumption in federal buildings constructed in 2030 or later, to make greater use of private financing for agency energy efficiency projects, to significantly reduce petroleum consumption and increase the use of alternative fuels in federal fleets, and directs the Department of Energy (DOE) to issue regulations for federal fleet conservation requirements by June 2009. Executive Order 13423 calls for similar improvement in federal building energy performance and federal fleet fuel consumption. Under EISA and Executive Order 13423, the Federal Energy

Management Program (FEMP) is responsible for assisting federal agencies in complying with energy efficiency requirements in buildings and fleets by assisting agencies with securing private financing, reporting progress, and through technical assistance and guidance.

The Committee recognizes that the President's budget request of \$22 million represents an 11% increase in funding for FEMP above FY 2008. However, this request is still 9% below FY 2002 levels when adjusted for inflation, and more than twice the amount of the increase in funding has been diverted from programs to promote government-wide energy efficiency improvements to pay for improvements for DOE facilities and operations. The President's budget reduces funding for project financing assistance by 7%; planning, reporting, and evaluation by 35%; and technical guidance and assistance to federal agencies by 63%. A small amount of these funds will support FEMP's new federal fleet program. However, the Administration proposes to use most of the diverted funds to support DOE's newly-created Transformational Energy Action Management (TEAM) initiative, a program to reduce DOE energy consumption by 30%, through building improvements and other activities. Funding for the TEAM initiative represents 27% of the total budget request for federal energy management in FY 2009. In addition, the Administration's request does not allocate funding for the federal fleet fuel conservation regulatory requirements established in EISA.

The Committee is concerned that the Administration has designated far too much money in federal energy management funding to support improvements for only one agency. The proposed distribution of funds within the federal energy management budget may prevent FEMP from assisting the rest of the federal government in achieving the goals set forth by Congress in EISA and by the Administration in Executive Order 13423.

## **Federal Workforce**

### *Civilian Employee Pay*

The President's budget proposes a 2.9% pay raise for federal civilian employees and a 3.4% pay raise for armed services personnel. It is unfortunate that the President has not embraced Congress' longstanding policy of pay parity for military and civilian employees. Congress has expressed strong bipartisan support for parity in pay adjustments between military and federal civilian personnel due to the essential service military and civilian employees provide to our nation and the vast wage gap that exists between public and private sector wages.

### *Federal Employee Health Benefits Program (FEHB)*

The Administration proposes permitting Blue Cross/Blue Shield (BC/BS) to offer a High Deductible Health Plan funded through a Health Saving Account (HSA) under its basic plan. 5 U.S.C. § 8903(1) authorizes the BC/BS Plan as the government-wide "Service Benefit Plan" to offer two levels of benefits. Currently, BCBS offers a Standard Option and a Basic Option and it is not clear that BC/BS has the authority to offer a third option. The Committee is opposed to BC/BS adding a third benefit option without the proper statutory authority.

## **Postal Service**

### *Postal Reimbursements*

The United States Postal Service (the Postal Service) is an independent agency charged with providing customers with reliable mail service at reasonable rates and fees. Under the President's budget proposal, there is no funding proposed to reimburse the Postal Service for the statutorily mandated service for free mail for the blind and overseas voters in 2009, or for the authorized reimbursement to the Postal Service for services previously provided. The Committee supports fully funding free mail services provided by the Postal Service.

The Committee disagrees with the President's decision, for the fifth year in a row, to propose eliminating the reimbursement payment owed to the Postal Service for costs incurred in the 1990s in the delivery of mail sent by nonprofits. Under the Revenue Forgone Reform Act of 1993, the Postal Service is to receive a reimbursement of \$29 million annually through 2035. Failure to fund this authorized appropriation places the remaining debt of more than \$750 million at risk of nonpayment, significantly increasing postal costs. Congress appropriated this amount every year from 1994 to 2007 and the Postal Service requests that these funds continue to be provided in FY 2009. The Committee supports fully funding the authorized \$29 million reimbursement in FY 2009.

### *Postal Regulatory Commission*

The Postal Regulatory Commission (PRC) is an independent agency that has exercised regulatory oversight over the Postal Service since 1970. The Postal Accountability and Enhancement Act (PAEA) (P.L. 109-435) assigned new responsibilities to the PRC, including providing regulatory oversight of the pricing of USPS products and services, ensuring USPS transparency and accountability, and serving as a forum to act on complaints with postal products and services.

The Committee supports the President's request to fund the PRC at a level of \$14,043,000, which is necessary to allow the PRC to implement multiple directives mandated by the PAEA.

### *Office of the Inspector General, U.S. Postal Service*

The Postal Service Office of the Inspector General (OIG) is an independent organization charged with reporting to Congress on the overall efficiency, effectiveness, and economy of the Postal Service's programs and operations. As directed by OMB, this is the first submission of the OIG's budget to OMB for inclusion in the President's budget. The OIG's funding for FY 2009 is to be transferred from the Postal Service Fund (revenue from the fund comes from postal ratepayers, not taxpayers) and is designated as "off-budget discretionary." The OIG requested \$241 million in funding. The President's budget provides for \$239 million for the Postal OIG. The Committee believes that the \$239 million requested by the President would provide the funding necessary for OIG operations, including OIG's new responsibilities under PAEA.

However, the Committee does not believe it is necessary for the OIG to submit its budget requests to OMB.

## **District of Columbia**

### *Court Services and Offender Supervision Agency (CSOSA)*

Originally established by the National Capital Revitalization and Self-Government Improvement Act of 1997 as an independent federal agency, CSOSA is responsible for overseeing the District of Columbia's pretrial services, adult probation and parole supervision functions. The core of CSOSA's mission is to increase public safety and prevent crime by reducing recidivism and prison re-entry.

The Committee is pleased that the President's FY 2009 budget request provides CSOSA a 6.3% funding increase over the agency's current funding level. In addition to supporting CSOSA's primary responsibilities, the recommended funding increase would provide additional funding for mandatory pay raises and inflation, the acquisition of information technology to continue CSOSA's progress in performing law enforcement and public safety functions, and resources for the Pretrial Services Agency to address post-release supervision of misdemeanor and traffic court defendants with mental health and substance abuse issues. The Committee supports the Administration's proposal to increase investment in this new federal agency.

### *Public Defender Service (PDS)*

The President's FY 2009 budget proposal for DC's Public Defender Service increases funding by \$2.9 million, bringing PDS's total funding to \$35,659,000. The Committee is supportive of the President's proposed increase in funding for PDS but notes with concern that this modest increase will not adequately allow PDS to address current challenges such as increasing the number of attorneys available to handle appellate cases and upgrading PDS's case management system. According to PDS, the estimated cost of replacing its case management system over a two year period is \$1.7 million, of which only \$500,000 is included in the President's request. The Committee supports an increase in funding for replacement of PDS's case management system to \$866,000 in FY 2009, with the remaining \$846,000 to be appropriated in FY 2010.

The DC Courts must be able to provide adequate compensation in order to attract qualified attorneys to represent indigent clients and children and families in the District. The DC Code sets the hourly rate paid to District of Columbia Criminal Justice Act (CJA) attorneys and Counsel for Child Abuse and Neglect (CCAN) attorneys at \$65. Attorneys representing indigent defendants at the US District Court are paid \$100 per hour. The Committee may consider legislation to ensure CJA and CCAN attorneys are compensated at a more competitive rate.

### *District of Columbia Courts*

The President's FY 2009 proposed budget provides for modest increases in the budgets of the DC Court of Appeals, the DC Superior Court, and the DC Court System. The Committee supports the President's recommended FY 2009 funding increases for the individual courts but the Committee notes, with concern, that the additional funding for the individual units seems to have come at the expense of the Court System's Capital Improvement Project.

By reducing funding from \$63 million in FY 2008 to \$52 million in FY 2009 for the Courts' capital enhancement efforts, the President's budget would not only delay the Courts' progress in meeting the goals of its 10 year Capital Master Plan for Judiciary Square but would also result in higher project costs in future years due to deferred maintenance and inflation. The Committee is aware that the DC Courts originally requested \$135 million for the Capital Improvement Project and therefore, urges Congress to consider increasing funding beyond the President's recommended level of \$52 million in FY 2009 for this important initiative.

### *District of Columbia Tuition Assistance Grant Program (DC TAG)*

The District of Columbia Tuition Assistance Grant (TAG) Program was established by the District of Columbia College Access Act of 1999 and amended by the DC College Access Improvement Act of 2002. DC TAG is designed to equalize postsecondary education opportunities for students from the District of Columbia by enabling them to attend any public college or university in the nation at in-state tuition rates. Moreover, DC TAG provides college-going students limited financial assistance in the form of scholarships to help cover costs of attendance at private colleges in the DC metropolitan area and at historically black colleges and universities (HBCU) throughout the country.

The Committee supports the President's request for a \$2 million increase in funding for DC TAG for a total funding level of \$35 million. The President's budget also proposes requiring that DC TAG funds be deposited into a dedicated account to be overseen by the Mayor of the District of Columbia. In addition, out of the \$35 million dollars recommended for DC TAG in FY 2009, the President's budget request would prevent the District from spending more than \$1.3 million of the total amount appropriated for the program on administrative expenses.

### *DC School Improvement Payment*

The President's budget proposal once again recommends continued funding for DC education improvement initiatives across all sectors of the education continuum. The President's budget request calls for \$54 million to be spent on the three-sector education strategy in FY 2009. The funding would provide \$18 million for DC public schools, \$18 million for DC charter schools, and \$18 million to support the DC Opportunity Scholarship program.

The Committee concurs with the President's sustained commitment to improving education in the District of Columbia and supports increased funding for educational improvements, but continues to oppose spending public dollars to fund school vouchers and

private school tuition. The Committee believes that federal funding would be better spent ensuring the delivery of quality public education in the District. Further, the DC Opportunity Scholarship program is set to expire at the end of 2008, which means the program would have to be reauthorized this year in order to permit funding in FY 2009 to be expended on the program. The Committee does not expect to reauthorize or extend the DC Opportunity Scholarship program.

The President's budget request also proposes a one-time payment of \$20 million to support the District's public school reform efforts. The Committee supports the President's proposed one time \$20 million education payment to the District of Columbia, to be spent as follows: \$3.5 million to recruit and train principals; \$7 million to develop innovative school based programs and for interventions in low performing schools; \$7.5 million to develop a customized data reporting and accountability system on student performance; and \$2 million to support data reporting requirements associated with the DC Public School teacher incentive program.

*District of Columbia Water and Sewer Authority (DCWASA)*

The President's budget proposes \$14 million in funding for continued implementation of the District of Columbia Water and Sewer Authority's Combined Sewer Overflow Long-Term Control Plan (CSO). The President's request is a \$6 million increase over the project's current funding level. However, the \$6 million increase is contingent upon DCWASA providing a 100% match for this payment.

The Committee is concerned that the President's budget does not provide funding for DCWASA's other major capital improvement projects, the Comprehensive Lead Pipeline Replacement Project and the Blue Plains Total Nitrogen Program. Going forward, the Committee urges Congress to consider the merits of providing funding in FY 2009 for each of DCWASA's current capital improvement projects.

*Washington Metropolitan Area Transit Authority (WMATA)*

Outside of providing requisite formula dollars to WMATA through the Department of Transportation's FY 2009 budget, the President's budget does not include any additional funding to support WMATA's operational or capital improvement costs. Under the President's budget, WMATA would receive \$34.7 million in formula funding for the procurement of 52 new rail cars and upgrades to the rail system's traction power lines to allow for the operation of longer trains.

The Committee supports the President's proposal to provide WMATA its last installment of funding as instructed by the full-funding grant agreement under Section 3043(j) of SAFETEA-LU. While such funding will assist WMATA in addressing its ongoing infrastructure challenges, the Committee continues to be concerned about the future impact that the lack of a dedicated funding source will have on WMATA's operations and infrastructure, especially at this critical time when METRO ridership has increased.

### *Emergency Planning and Security Costs in the District of Columbia*

The Committee recognizes that the large presence of the federal government in the District often places considerable demands on the District's Metropolitan Police Department and other regional security agencies, which are responsible for ensuring public safety and protecting citizens against terrorist threats or attacks in the area.

The Committee is pleased that the President's FY 2009 budget proposal also recognizes the critical role these security units play in protecting our nation's capital and responding to threats of attack by providing federal funding in the amount of \$15 million to reimburse the District for costs associated with carrying out the previously mentioned duties. The President's \$15 million request represents a \$12 million increase over the \$3 million provided in FY 2008 to reimburse the District for emergency planning and security costs. The Committee notes that the significant increase in funding is due to projected costs related to covering expenses for the presidential inauguration in January of 2009.

### *Social Policy Riders*

Once again, the President's budget includes social riders and policy provisions that are inconsistent with the concept of Home Rule. Although steps were taken in the FY 2008 Omnibus Appropriations bill to permit the District to use local funds for a needle exchange program intended to reduce the spread of HIV among drug users, the President's FY 2009 budget would prohibit the use of local or federal funds to support the program. The Committee disagrees with the President and urges the maintenance of current language allowing local funds to be spent on the District's needle exchange program in FY 2009.

The Committee disagrees with the President's inclusion of provisions to restrict the District from using local funds to advocate for voting representation in Congress and to enact a medical marijuana initiative approved by District voters. The Committee also disagrees with the President's proposal to extend the DC School Choice Incentive Act of 2003 into school year 2009-2010 and to raise the maximum awards for DC Opportunity Scholarships for students in kindergarten through grade 8 to \$7,500 and for students in grades 9 through 12 to \$12,000.

### **Office of National Drug Control Policy (ONDCP)**

The President's FY 2009 budget request for ONDCP totals \$418.4 million, which is \$3.4 million less than the FY 2008 appropriation. The Committee is concerned about the priorities of both ONDCP's own budget and the larger National Drug Control budget that ONDCP coordinates and certifies.

The vast proportion of ONDCP's budget is reserved for three programs: Drug Free Communities Support Program; the High Intensity Drug Trafficking Area Program (HIDTA); and the National Youth Anti-Drug Campaign (Media Campaign). The President proposes to reduce funding for Drug Free Communities, a grant program for community-based drug prevention efforts, from \$90 million to \$80 million. The Committee believes that these prevention programs are essential and should not be cut. Similarly, the Committee disagrees

with the proposal to reduce funding for HIDTA \$30 million to \$197.9 million and believes that the program should maintain level funding. Finally, the President proposes to fund the Media Campaign at \$100 million, \$40 million more than the FY 2008 budget. Although the Committee generally supports funding for drug use prevention, we do not believe that the Media Campaign merits support at this level. After a congressionally funded evaluation could not establish that the Media Campaign was effective in reducing youth drug use, Congress mandated in the ONDCP Reauthorization Act of 2006 (Reauthorization Act) that ONDCP develop appropriate measures to evaluate the effectiveness of individual advertisements and of the Media Campaign as a whole. While the Media Campaign has made progress in applying focus-group-testing to individual advertisements, it has yet to establish campaign-wide outcome measures and to demonstrate its effectiveness in reducing drug use. In the absence of such measures and positive outcomes, the Committee believes funding at the FY 2008 level is appropriate.

The Committee has two main concerns regarding ONDCP's stewardship of the National Drug Control: budget priorities and accountability to Congress. First, the Committee is concerned that ONDCP has prioritized supply-reduction strategies that have not demonstrated much success in preventing drug abuse, such as interdiction and source-country eradication, over more effective demand-reduction strategies, such as prevention and treatment. The Administration would decrease the share of the National Drug Control budget reserved for prevention by \$249.8 million, or 14.2%, while increasing interdiction by \$616.7 million, or 19.2%. From FY 2002 to FY 2009, funding for interdiction efforts have doubled and funding for international programs (including crop-eradication efforts in Plan Colombia and the Andean Drug Initiative) have risen faster than funding for treatment, domestic law enforcement, and prevention efforts. However, interdiction and source-country eradication have not led to net decreases in overseas drug cultivation, increases in drug prices, or decreases in the drug purity or domestic availability. The Committee is concerned that adopting an Andean-like approach to Mexico, as proposed in the Administration's \$432.2 million FY 2009 request for the Merida Initiative, may not be an effective use of drug control resources.

The Committee also is concerned that the Administration has not matched its stated commitment to drug treatment courts, and problem-solving courts more generally, with sufficient funding to expand these programs nationwide. The Committee supports the Administration's proposal to increase Department of Health and Human Services funding for treatment services for problem-solving court enrollees from \$9.9 million to \$37.8 million. However, we do not support the proposed elimination of \$15.2 million reserved for new drug treatment courts from the Department of Justice's budget. In addition, the proposed budget would eliminate \$1 million from ONDCP's budget for the National Drug Court Institute (NDCI), which NDCI has used to provide training and technical assistance to localities starting new drug courts. Given the demonstrated effectiveness of and bipartisan support for these courts, funding for the development of new problem-solving courts should be expanded, not cut.

Finally, the Committee is concerned that ONDCP has failed to meet the revised budgetary reporting requirements of Section 105 of the Reauthorization Act. The provisions in Section 105 were the product of numerous Committee hearings. These provisions require ONDCP budget requests to include all funding requests for any drug control activity, including

certain costs associated with drug law enforcement activities and prosecuting and incarcerating drug users that ONDCP had excluded from its budgets since FY 2003. ONDCP has informed the Committee that it intends to separately account for at least some of these activities in an appendix to its budget, but we believe ONDCP is obligated to prepare and certify a unified budget that includes all these costs and that ONDCP should address these activities in its annual National Drug Control Strategy.

### **Abstinence-only Programs**

The President's \$204 million request for abstinence-only education in FY 2009 would represent an increase of \$28 million over the FY 2008 Consolidated Appropriations Act. There continues to be little evidence that abstinence-only programs improve adolescent health. In 2007, an independent evaluation of federally-funded abstinence-only programs commissioned by the Department of Health and Human Services (HHS) found that the programs had no impact on teens' behavior or health. In addition, despite documented evidence of false and misleading information, GAO found in 2006 that HHS still does not adequately review these programs for medical accuracy.

### **Medicaid Regulations**

The President's budget assumes the implementation of seven Medicaid regulations proposed or made final during 2007. These regulations relate to cost limits for public providers (CMS 2258-FC), payment for graduate medical education (CMS 2279-P), payment for hospital outpatient services (CMS 2213-P), provider taxes (CMS 2275-P), coverage of rehabilitative services (CMS 2261-P), payments for costs of school administrative and transportation services (CMS 2287-P), and targeted case management (CMS-2237-IFC). These regulations would make significant changes in current Medicaid policy affecting thousands of providers and their patients. In almost all cases, however, these policy changes have not been directed or authorized by statute.

In total, these regulations are projected to reduce federal Medicaid matching payments to states by over \$12 billion over the next five years. The President's budget assumes these reductions. Congress, however, has imposed moratoria on two of the regulations (cost limits for public providers and Graduate Medical Education) through May 25, 2008, and on two other regulations (rehabilitative services and school administrative and transportation costs) through June 20, 2008. Testimony received at a hearing before the Committee on November 1, 2007, supports the extension of these moratoria. Of particular concern is the potential impact of several of these regulations on the emergency and trauma care capacity of public and teaching hospitals in cities at high risk of a terrorist strike using conventional explosives or biohazards.

## **Military Spending**

### *Wounded Warrior Transition*

The Committee notes that the Administration continues to fund programs and resources devoted to military health, particularly wounded warriors injured while serving in Operations Iraqi Freedom and Enduring Freedom. The Administration is prepared to provide some \$42.8 billion in resources, including \$10 billion in mandatory funding, for the Defense Health Program.

The Committee acknowledges that there are systemic issues in the military health arena, particularly in the transition for injured service members into the Veterans Affairs system that require long-term funding. In the aftermath of the reports last year of substandard living facilities and shoddy treatment of soldiers and their families at Walter Reed Army Medical Center, the Army and the Department of Defense have made significant efforts to improve the quality of care for injured service members. However, there are a number of areas that still need improvement.

### *Missile Defense and Weaponization of Space*

The Committee remains highly concerned about the status of a national missile defense program, and notes that the Administration proposes \$10.4 billion for ballistic missile defense programs in FY 2009 – an increase of \$858 million, or 9%, over enacted FY 2008 levels. Serious questions remain about the effectiveness of these programs and the fact that they continue to draw funds away from other national security and homeland security priorities.

The Administration also proposes to invest \$10.7 billion dollars "to build a robust, secure and protected space-based capability." The Administration's inability to provide justification to Congress on the threats necessitating space-based offensive and defensive technology raises serious concerns with the President's funding requests for these programs.

### *Nuclear Non-proliferation*

The Committee remains concerned that at a time when the securing of nuclear materials and dismantling the global supply of nuclear weapons should be the primary focus of the National Nuclear Security Administration's Weapons Activities program, the President again proposes funding the Department of Energy's plans to upgrade the nation's nuclear arsenal under its complex transformation plan. Though Congress made clear its opposition last year by zeroing out any funding for the program, the President has again requested \$10 million per year through FY 2013 to continue design research for the Reliable Replacement Warhead Program (RRW). Congress refused to fund the RRW in FY 2008 after the Administration made a similar request for \$88 million, as there continues to be debate within the scientific community as to whether a new RRW warhead design is needed to replace aging warheads, and if it should even be placed into the U.S. nuclear stockpile without first being exploded in underground tests. Similarly, the President requests \$100 million for construction of a new plutonium pit facility, which would be

used solely for producing new nuclear weapons, after Congress rejected a similar request for a different facility last year.

The President also proposes \$222 million in funding for nuclear weapons incident response. Nearly \$160 million of that amount would provide for collaborative efforts with the Homeland Security Department and the intelligence community to study “improvised nuclear device concepts.” The Committee remains concerned because a recent study by the congressionally-mandated Commission on National Guard and Reserves found that the nation was unprepared to deal with such an incident, particularly due to lack of strategic planning by US Northern Command, and because many state National Guard and Reserve numbers had been depleted by the current conflicts in Iraq and Afghanistan. The Commission concluded that the United States had an insufficient number of trained ready forces available to respond to such an incident, including an estimated equipment shortfall in the reserve component of \$48 billion from 2007 levels.